

DEPARTMENT OF STATE RESPONSE TO GOVERNMENT ACCOUNTABILITY OFFICE QUESTIONS

Re: B-325350

Question 1. We understand that the CIPA appropriation makes funds available for U.S. assessed contributions up to the amount specified in Annex IV accompanying United Nations General Assembly Resolution 64/220, which is 27.14%, and that the U.S. assessed contribution for UN peacekeeping activities in 2013 was 28.38%. We further understand that in order to meet the 28.38% assessment for 2013, the Department of State and the United Nations use a combination of CIPA appropriations and UN peacekeeping credits. Please explain how appropriated CIPA funds and peacekeeping credits are applied to U.S. assessed contributions for UN peacekeeping. Please include a breakdown of the amounts of CIPA appropriations and peacekeeping credits that were applied in 2013, as well as the chronology of their application.

In order to describe how Contributions for International Peacekeeping Activities (CIPA) appropriated funds and peacekeeping credits are applied against UN peacekeeping assessments, this response provides information on the following: the process of formulating peacekeeping assessments; the Department's use of CIPA appropriations to make contributions to pay those assessments; and the UN's automatic application of credits towards peacekeeping assessments. The United Nations Operation in Cote d'Ivoire (UNOCI) is used throughout this response as an example of how UN peacekeeping missions¹ are financed. A chart is also enclosed that gives detailed information for each peacekeeping mission in FY 2013.

The response to this question deals only with credits attributable to ongoing peacekeeping missions that have been automatically applied by the United Nations. The United Nations has not in FY 2013, or to date in FY 2014, applied any credits from closed peacekeeping missions to offset U.S. peacekeeping assessments. Additional information on credits attributable to closed missions is provided in response to question 3.

Background on Peacekeeping Assessments

Under the United Nations Charter, each UN member state, including the United States, has a binding international legal obligation to make contributions to cover expenses of the United Nations, including those incurred in carrying out peacekeeping missions, as apportioned by the United Nations General Assembly. Article 17 of the UN Charter provides in pertinent part:

1. The General Assembly shall consider and approve the budget of the Organization.
2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

¹ In addition to peacekeeping operations, assessments for three international criminal tribunals are based on the peacekeeping assessment rate and are also funded out of the CIPA account.

As such, the UN General Assembly may create binding international obligations upon member states through assessments for expenditures related to UN mandated peacekeeping operations.² In addition, Article 19 of the UN Charter provides that a UN member state which is in arrears in the payment of its financial obligations to the United Nations shall lose its vote in the General Assembly if its arrears equal or exceed the amount of contributions due from it for the preceding two full years.

The United Nations apportions peacekeeping expenses among Member States based on a special scale of assessments under a formula approved by the General Assembly.³ UN peacekeeping assessment rates have been updated on a triennial basis and apply during the specified calendar year. For calendar year 2012, the United States rate of assessment was 27.1415%.⁴ For calendar year 2013, the United States rate of assessment was 28.3835%.⁵

The process by which UN member states are assessed for these costs involves two key steps. First, the UN Security Council adopts resolutions creating or extending each peacekeeping mission. Such resolutions typically provide the mandate for a mission, as well as its duration (normally between six months and one year, subject to renewal). Second, the UN General Assembly adopts a resolution that funds the mission for the upcoming UN fiscal year for peacekeeping missions and apportions that funding among Member States. The UN's fiscal year for peacekeeping missions begins on July 1st and ends on June 30th, with General Assembly resolutions providing for the financing of missions ordinarily occurring in late June.

After the UN General Assembly adopts the financing resolution for a mission, letters of assessment to cover expenses for the duration of that mission's mandate period are sent to Member States. These letters of assessment are ordinarily sent shortly after the UN's peacekeeping fiscal year begins on July 1. Because the mission's mandate period frequently does not extend through the entire UN fiscal year, the letters of assessment received at the beginning of the UN's peacekeeping fiscal year may not include an assessment for a full year of a mission's expenses, even though full year financing for the mission has been approved by the General Assembly. If the UN Security Council extends the duration of a peacekeeping mission, the UN will send an additional letter of assessment to cover the extended mandate period, up through the end of the UN peacekeeping fiscal year on June 30.

² Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: I.C.J. Reports 1962, p. 151; *see also* Written Statement of the United States of America, Certain Expenses of the United Nations, at 186 (Feb. 1962) available at <http://www.icj-cij.org/docket/files/49/11781.pdf> ("This power to create binding obligations by assessment extends to assessments for expenditures relating to operations for the maintenance of international peace and security.").

³ *See* G.A. Res. 235, U.N. Doc. A/Res/55/235 (2001).

⁴ The percentage represents the United States share of the total assessment for the UN peacekeeping operation for the applicable year. *See* G.A. Res. 249, U.N. Doc. A/Res/64/249 (December 24, 2009), endorsing the assessment rates as contained in A/64/220/Add.1 for calendar years 2010-2012.

⁵ *See* G.A. Res. 239, U.N. Doc. A/RES/67/239 (December 24, 2012), endorsing the assessment rates as contained in A/67/224/Add.1 for calendar years 2013-2015.

Because the peacekeeping rates of assessment follow the calendar year, but the UN peacekeeping fiscal year runs from July 1 through June 30, there may be two different rates applicable to peacekeeping assessments for any given fiscal year. Further complicating matters, the calendar year 2013 assessment rate had not been approved by the General Assembly at the time initial assessment letters were sent for the UN peacekeeping fiscal year beginning July 1, 2012 (“UN FY 2012/2013”). Therefore, all Member States initially received letters of assessments covering a portion of UN FY 2012/2013 based on the 2012 assessment rate. Subsequently, after the UN General Assembly approved assessment rates for 2013-2015 in December 2012, the United Nations sent an additional letter of assessment in January 2013 reflecting the new rate of 28.38% for the United States.

Contributions are considered as payable in full within thirty days of the receipt of the letter of assessment or on the first day of the calendar year to which they relate, whichever is later. As of January 1 of the following calendar year, the unpaid balance of contributions assessed is considered to be one year in arrears.⁶ The Department normally attempts to pay assessed peacekeeping contributions within 30 days of receipt of the assessment letter if there are available appropriations to do so.

In the case of UNOCI, the Security Council first decided to establish the peacekeeping operation in 2004.⁷ The Security Council has thereafter periodically adopted resolutions to extend the mandate.⁸ For the FY 2012/2013 UN peacekeeping cycle, the United States received two assessments – one in the summer of 2012 based on the 27.14 assessment rate, and then an updated assessment in January 2013 that included adjustments of \$3,726,843 attributable to the 28.28% rate applicable for 2013. For the FY 2013/2014 UN peacekeeping cycle, the General Assembly approved a resolution in June 2013 providing \$617,514,700 for UNOCI and related support expenses, and apportioning those expenses among member states based on the applicable assessment rates for 2013 and 2014.⁹ Because the Security Council renewed UNOCI’s mandate in July, the letter of assessment received by the United States on August 7, 2013 covered the entire UN peacekeeping fiscal year, with the U.S. assessment totaling \$175,207,687.

⁶ Financial Regulations and Rules of the United Nations, Secretary General’s Bulletin, U.N. Doc. ST/SGB/2003/7 (2003), Regulations 3.4 and 3.10.

⁷ S.C. Res. 1528, U.N. Doc. S/RES/1528 (2004).

⁸ Most recently, in July 2013 the Security Council adopted a resolution renewing UNOCI’s mandate for a period of one year through July 31, 2014. S.C. Res. 1528, U.N. Doc. S/RES/2112 (2013).

⁹ G.A. Res. 271, U.N. Doc. A/RES/67/271 (2013), para 15, 16, 18.

Contributions for International Peacekeeping Activities Appropriations

Section 8 of the United Nations Participation Act of 1945, as amended, provides:

There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the United Nations as apportioned by the General Assembly in accordance with article 17 of the Charter,....

Consistent with this authorization, the annual appropriation for CIPA provides “[f]or necessary expenses to pay assessed and other expenses of international peacekeeping activities directed to the maintenance or restoration of international peace and security.” CIPA appropriations have been used exclusively for U.S. contributions to pay UN peacekeeping assessments, including certain assessments for international criminal tribunals.¹⁰ Further, UN peacekeeping assessments are exclusively funded out of CIPA appropriations, except where Congress has specifically authorized payment of assessed contributions from another appropriation.¹¹ In FY 2013, CIPA appropriations were used to pay contributions for eighteen peacekeeping assessments.

Although the United States has an international legal obligation under the UN Charter to pay UN assessments in full, Congress has limited the use of CIPA appropriations to pay those assessments. With respect to peacekeeping assessments, section 404(b)(2)(A) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. No. 103-236 (22 U.S.C. 287e note), as amended provides:

Funds authorized to be appropriated for “Contributions for International Peacekeeping Activities” for any fiscal year after fiscal year 1995 shall not be available for the payment of the United States assessed contribution for a United Nations peacekeeping operation in an amount which is greater than 25 percent of the total of all assessed contributions for that operation.

Beginning with the Foreign Relations Authorization Act, Fiscal Year 2003, section 404(b)(2) has been amended several times in order to raise the cap to allow full payment of peacekeeping assessments for specific calendar years.¹² Rather than again amend section 404(b)(2), in FY

¹⁰ See supra note 1. In FY 2013, \$100,000 was transferred from CIPA to the Diplomatic & Consular Programs appropriation, pursuant to section 7009 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. No. 112-74), as carried forward under the Full-Year Continuing Appropriations Act, 2013 (Div. F, Pub. L. No. 113-6), for program monitoring and evaluation.

¹¹ See third proviso under the heading International Security Assistance, Department of State, Peacekeeping Operations appropriation, title IV, Div. I, P.L. 112-74, as modified for FY 2013 by § 1703(b) of the Full-Year Continuing Appropriations Act, 2013 (Div. F, P.L. 113-6).

¹² See Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. No. 107-228) § 402(a) (raising the cap to 28.15% for 2001, 27.90% for 2002, 27.40% for 2003 and 2004); Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, Pub. L. No. 111-8) § 7051 (raising the cap to 27.1 for 2005

2011, Congress provided notwithstanding authority for funds provided under the CIPA heading to be made available for assessed contributions up to the amount specified in the applicable General Assembly documents setting forth the assessment rates, subject to a national interest determination by the Secretary of State.¹³ Congress followed a similar approach for FY 2012 with the provisos discussed in greater detail in the response to question 5.

The Department has used CIPA appropriations to make assessed contributions in amounts consistent with the limitations imposed by the statutory cap applicable at the time of contribution. Obligations of available CIPA appropriations are made after receipt of assessment letters, at which point funds are expended through disbursement to the United Nations. Letters of assessment attributable to a single UN peacekeeping fiscal year may be received in different U.S. fiscal years. Although 15% of CIPA funds are made available for two fiscal years, it is still not possible to completely synchronize payments for the UN peacekeeping fiscal year cycle with a single year CIPA appropriations account. As a result, a portion of the FY 2013 CIPA appropriations were used to make contributions for assessments received after October 1, 2012 attributable to the 2012/2013 UN peacekeeping fiscal year. But the majority of FY 2013 CIPA appropriations were used to make contributions for assessments received after the start of the 2013/2014 UN peacekeeping fiscal year.

In FY 2013, the Department provided to the Committees of Appropriations, Senate Foreign Relations Committee, and the House of Representatives Foreign Affairs Committee, an initial spending plan for FY 2013 CIPA appropriations on June 17, 2013, and then an updated spending plan on September 13, 2013. These spending plans served to notify Congress of the Department's intended use of CIPA appropriations, to the extent that mission allocations changed from the prior notifications or the budget request for the current fiscal year.¹⁴ In total, the updated spending plan included \$1,829,374,430 in available CIPA appropriated funding to be used for assessed contributions in FY 2013. In calculating the amounts of CIPA appropriated funds to be used for contributions to each mission, the Department ensured that no mission received CIPA appropriated funds in excess of 27.14% of total assessed expenses for that mission. However, the UN's application of credits to offset U.S. obligations (discussed below),

through 2009); and Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F., Pub. L. No. 111-117) § 7051 (raising the cap to 27.3 for 2010).

¹³ Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. No. 112-10) § 2120(b)(1)). Both the FY 2011 and FY 2012 provisions reference "Annex IV accompanying United Nations General Assembly Resolution 64/220". UN General Assembly Resolution 64/220 does not pertain to peacekeeping operations. We have viewed this as an obvious drafting error, with the manifest Congressional intent being to allow CIPA to be used up to the applicable assessment rate, which is contained in General Assembly document 64/220 Add. 1. See U.S. Government Accountability Office, *Principles of Federal Appropriations Law*, Vol. 1: 2-79 (3d ed.). Congress has not objected to this interpretation, and notably the Senate Appropriations Committee cited to the correct document in its FY 2013 appropriations bill. See S.3241, 112th Cong. (2012).

¹⁴ The Department of State is required to notify committees of Congress of certain reprogrammings pursuant to annual appropriations provision (§7034, Div. I, P.L. 112-74) and section 34 of the Department of State Basic Authorities Act (22 U.S.C. § 2706).

when combined with contributions from CIPA appropriated funds, rendered an amount that exceeded 27.14% for a number of missions. Because of concerns related to CIPA contributions plus UN applied credits exceeding 27.14%, a “congressional hold” was placed on \$72,695,686 of CIPA appropriated funding, which the Department has respected as a matter of comity.

For UNOCI, the Department’s updated spending plan included \$167,602,752 in CIPA appropriated funds for an assessed contribution for UNOCI, which is 27.14% of the \$617,514,700 in total assessments for UNOCI for UN peacekeeping FY 2013/2014. As a result of the Department’s honoring the congressional hold, to date the Department has only obligated \$159,859,277 for assessed contributions to the UNOCI mission -- \$11,331,778 below the amount owed by the United States after the UN’s application of credits.

The UN’s Application of Credits from Open Missions

As described in greater detail in the response to question 2, if the annual amounts assessed to Member States for a given mission, which are based on the UN budget projections, exceed the actual mission expenditures for that fiscal year, the UN generally distributes the difference attributable to each Member State as a “credit” to offset other assessments for that mission. The UN General Assembly’s Fifth Committee finalizes review of the actual spending by each peacekeeping mission one year after the end of a UN peacekeeping fiscal year. In June 2013, for example, the Fifth Committee finished reviewing the use of resources for the 2011/2012 UN peacekeeping fiscal year. The UN formally informs Member States of new peacekeeping credits in the beginning of the UN peacekeeping fiscal year as part of the regular assessment bill for each mission, after Fifth Committee and General Assembly action.

If a Member State has prior outstanding balances on a given mission, any credits from that mission attributable to the Member State are automatically applied to reduce the Member State’s unpaid balance on the mission. If a Member State has no outstanding balance on a given mission, any credits are automatically applied to offset the Member State’s current assessment for the mission. The credits are included as offsets on the assessment letters for a specific mission, either reducing the prior outstanding balances or the current assessment.

In the summer of 2013, after reviewing the use of resources for the 2011/2012 UN peacekeeping fiscal year, the United Nations indicated that there were \$112,448,909 in unencumbered credits attributable to prior U.S. contributions for nine active peacekeeping missions.¹⁵ For three of those nine missions, the United States did not have prior outstanding balances, so the United

¹⁵ Unencumbered credits were attributable to the following nine missions: UNIFIL (Lebanon), UNMIL (Liberia), UNOCI (Cote d’Ivoire), MINUSTAH (Haiti), UNMIT (Timor-Leste), UNAMID (Darfur), MONUSCO (Congo), UNISFA (Abyei), UNMISS (South Sudan). Four additional missions had “encumbered” credits (i.e. credits attributable to prior U.S. contributions for a peacekeeping mission which were fully applied to pre-2012/2013 U.S. arrears for that mission).

Nations automatically applied the credits against the 2013/2014 UN peacekeeping fiscal year assessment.¹⁶ For the six other missions with credits, there were outstanding balances because the U.S. assessment rate for the 2013 portion of the 2012/2013 UN peacekeeping fiscal year was 28.38%, but the Department only used CIPA appropriations to pay at 27.14% due to the statutory cap. So the UN automatically applied credits attributable to these missions towards the UN FY 2012/2013 outstanding balances.¹⁷

For UNOCI, at the beginning of UN FY 2013/2014, the UN made available \$7,743,475 in credits attributable to U.S. contributions. Of that amount, the UN applied \$3,726,843 against what the UN describes as “amounts outstanding”. As described above, that amount was owed by the United States because the Department limited the FY 2012 CIPA contribution for UNOCI to 27.14%, but in January 2013 the UN updated the assessment to reflect the rate applicable for 2013. The remaining amount of available credits, \$4,016,632, was applied against the current UN FY 2013/2014 assessment. This credit reduced the amount owed by the United States for UNOCI to \$171,191,055 for UN FY 2013/2014. The Department included in its FY 2013 spending plan a contribution of \$167,602,752 for UNOCI (reflecting the 27.14% rate) using available CIPA appropriations, which would leave the United States with \$3,588,303 in unpaid UNOCI assessments for UN FY 2013/2014.

Question 2. Please describe how peacekeeping credits accumulate and are administered at the United Nations, including any applicable UN financial regulations or other policies that may govern the process.

As described in response to question 1, peacekeeping credits are the result of the actual expenditures of a peacekeeping mission for a UN peacekeeping fiscal year being less than the amount apportioned and assessed by the General Assembly.

Under Article 17(1) of the UN Charter, the General Assembly has authority to “consider and approve the budget of the Organization.” In this connection, the General Assembly approves resolutions on UN budgets, financial regulations, and other measures regarding the use of UN funds, including peacekeeping credits, and issues broad directives governing the financial management of the United Nations through its Financial Regulations. Within the framework of those Financial Regulations, the Secretary General of the UN promulgates Financial Rules, which constitute a statement as to the manner in which the Financial Regulations are to be implemented.¹⁸ While the Financial Rules and Regulations are instructive as to regular financial

¹⁶ The United States did not have prior outstanding balances for the following three missions: MINUSTAH (Haiti), UNMIT (Timor-Leste), UNISFA (Abyei).

¹⁷ Three missions (UNOCI (Cote d’Ivoire), UNAMID (Darfur), MONUSCO (Congo)) had sufficient credits to fully cover the UN FY 2012/2013 outstanding balance. The UN applied the balance of credits attributable to the United States for those missions against the FY 2013/2014 assessment.

¹⁸ Financial Regulations and Rules of the United Nations, Secretary General’s Bulletin, U.N. Doc. ST/SGB/2003/7, para. 2-3.

procedures of the United Nations, the administration of peacekeeping credits is ultimately subject to applicable decisions adopted by the UN General Assembly on the budget in accordance with Article 17 of the UN Charter.

For active missions, General Assembly resolutions that provide for the financing of missions for the current UN peacekeeping fiscal year ordinarily contain language concerning the disposition of unencumbered balances identified from prior UN peacekeeping fiscal years. For example, Resolution 67/271, adopted by the General Assembly on June 28, 2013, on financing UNOCI provides in pertinent part:

20. Also decides that, for Member States that have fulfilled their financial obligations to the Operation, there shall be set off against their apportionment, as provided for in paragraph 16 above, their respective share of the unencumbered balance and other income in the total amount of 28,530,000 dollars in respect of the financial period ended 30 June 2012, in accordance with the levels updated in its resolution 64/249 of 24 December 2009, taking into account the scale of assessments for 2012, as set out in its resolution 64/248 of 24 December 2009;

21. Further decides that, for Member States that have not fulfilled their financial obligations to the Operation, there shall be set off against their outstanding obligations their respective share of the unencumbered balance and other income in the total amount of 28,530,000 dollars in respect of the financial period ended 30 June 2012, in accordance with the scheme set out in paragraph 20 above;

....

Consistent with the scenario described in the response to question 1, paragraph 20 provided that credits attributable to a Member State's UN FY 2011/2012 contributions for UNOCI would be used to offset the current UNOCI assessment for that mission if the Member State has paid prior assessments for UNOCI in full; and paragraph 21 provided that, if the Member State had outstanding balances for UNOCI, the credits attributable to a Member State's UN FY 2011/2012 contributions for UNOCI would first be used to pay off those outstanding balances. Such language is common to UN General Assembly Resolutions financing ongoing missions.¹⁹

¹⁹ The concept of using credits to offset first prior unpaid assessments and then current assessments is consistent with the UN's Financial Regulations. Although not specifically on point, Regulation 3.5 provides that "Payments made by a Member State shall be credited first to the Working Capital Fund and then to the contributions due in the order in which the Member was assessed."

Question 3. When a UN peacekeeping mission is closed and a balance exists for the U.S. contribution to that mission, how are credits issued to the United States? To which UN budget account are these credits applied? Please explain the significance of section 10 of the United Nations Participation Act of 1945 (Pub. L. No. 79-264 (Dec. 20, 1945), as added by Pub. L. No. 106-113, Division B, § 1000(a)(7), 113 Stat. 1501, 1536 (Nov. 29, 1999), classified at 22 U.S.C. § 287e-2).

Credits from Closed Peacekeeping Missions

Like credits attributable to active peacekeeping missions, the disposition of credits from closed peacekeeping missions is ultimately subject to applicable decisions of the UN General Assembly adopted in accordance with Article 17 of the UN Charter.²⁰ In practice, the Secretary General reports annually to the UN General Assembly on the financial position of closed peacekeeping missions and makes recommendations to the General Assembly concerning any cash surpluses.²¹ Although cash surpluses in closed missions are attributable to prior contributions from Member States, the UN General Assembly has on prior occasions not made the full amount of any surplus available for credit to Member States. For example, with respect to the United Nations Mission in the Central African Republic and Chad (MINURCAT), whose mandate ended on December 31, 2010, the General Assembly decided in 2012 to make only \$128,247,000, of the total unencumbered balance of \$149,947,800, available in credits to Member States. As with active missions, credits were first to be offset against any outstanding obligations owed by the Member State for MINURCAT. If a Member State had no outstanding obligations for MINURCAT, the General Assembly encouraged the Member State to request that such unencumbered credits be applied to any other accounts where the Member State had outstanding assessments.²² The share of credits attributable to United States' contributions is \$47,810,245, which remains with the United Nations and is unencumbered because the United States had no outstanding obligations for this mission.

The UN General Assembly decided in 2003 to retain a portion of the net cash available for credit to Member States in the accounts of 17 closed peacekeeping missions to meet the immediate cash flow requirements of active peacekeeping missions.²³ Subsequently, in August 2011 the UN General Assembly requested the Secretary-General make available \$180 million of the net cash available for credit from closed peacekeeping missions to Member States, on the basis of the

²⁰ See, Report of the Advisory Committee on Administrative and Budgetary Questions, U.N. Doc. No. A/66/713 (2012), para. 7, 14 (setting forth the view of the Secretary General that “without a specific decision of the General Assembly requiring the return of surplus cash in closed peacekeeping missions, under the Financial Regulations and Rules the Secretary-General has neither a requirement nor a basis for making such a return.”)

²¹ See, e.g., Report of the Secretary General, U.N. Doc. No. A/65/556 (2010).

²² G.A. Res. 267, U.N. Doc. No. A/RES/66/267 (2012), para 10-12.

²³ See G.A. Res. 323, U.N. Doc. No. A/Res/57/323 (2003). The United Nations refers to the practice of having one peacekeeping mission use the cash surplus from another missions as “cross-borrowing.”

scale applicable to each mission's last assessment.²⁴ A report of the UN Secretary General indicated that the resulting credits would first be applied to settle outstanding assessments on a mission-by-mission basis. After any outstanding assessments for the closed mission were settled, Member States could request that remaining credits be applied against other outstanding contributions or refunded to the Member State.²⁵ Of the \$180 million in credits released in 2011, approximately \$54 million were attributable to prior U.S. peacekeeping contributions. Of that amount, \$39.4 million have remained frozen by the United Nations because the credits originated from closed missions for which the United States continues to have unpaid arrears. An additional \$14.6 million is unencumbered, and the United States may request that the United Nations apply those credits to offset current and future assessments, as well as unpaid peacekeeping obligations.

In total, there are \$120,285,114 in unencumbered peacekeeping credits attributable to prior U.S. contributions for closed peacekeeping missions. In accordance with the Financial Rules Regulations of the United Nations, and the longstanding practice of the United Nations, we would expect that the United Nations would apply those credits as requested by the United States, although (as described below) the UN General Assembly retains the authority to determine the disposition of credits notwithstanding Member State requests. The United States did not request in FY 2013 that any of these credits be applied against current or prior peacekeeping obligations.

Section 10 of the United Nations Participation Act of 1945

Section 10 of UN Participation Act (UNPA), 22 U.S.C. § 287e-2, pertains to United Nations reimbursement to the United States for certain types of assistance provided by the United States relating to assessed peacekeeping operations. Section 10 clearly *does not* require the United Nations to reimburse the United States for assessed contributions. Its requirements only extend to the "covered assistance" provided pursuant to the laws specified in subsection (c). That subsection does not include section 8 of UNPA, which authorizes assessed contributions to the United Nations. The legislative history makes clear that the provision "is intended to ensure that the U.S. Government is reimbursed by the United Nations in a timely manner for military assistance it provides in support of the United Nations or U.N. peacekeeping operations."²⁶ It would make little sense to require the United Nations to reimburse the United States for assessed contributions, nor has section 10 ever been read to impose such a requirement.

Section 10 also does not require that peacekeeping credits be reimbursed to the United States. Section 10 does allow, under certain circumstances, the United States the option to accept credits

²⁴ G.A. Res. 293, U.N. Doc. No. A/RES/65/293 (2011). There remains a current balance of \$80 million from closed peacekeeping missions that the UN uses to meet immediate cash flow requirements of active peacekeeping missions.

²⁵ Report of the Secretary General, U.N. Doc. No. A/65/556 (2010), para. 14.

²⁶ H. Rep. No. 106-479, at 1062 (1999).

against U.S. assessments instead of requesting a direct reimbursement. Section 10(a)(3)(B) provides that “[r]eimbursement under this subsection may include credits against the United States assessed contributions for United Nations peacekeeping operations, if the expenses incurred by any United States department or agency providing the assistance have first been reimbursed.” None of the credits at issue are attributable to the United Nations reimbursing the United States for assistance provided for UN peacekeeping operations, as is contemplated by this provision. Nothing in the language of section 10 has any bearing on the application of credits attributable to assessed contributions, which are at issue here.²⁷

Question 4. Please explain the Department of State's role in directing or requesting how peacekeeping credits are applied.

Once U.S. contributions have been transmitted to the United Nations, they become the funds of the United Nations and are available for use by the United Nations consistent with the UN Charter. As discussed above, the UN General Assembly has authority to consider and approve the budget of the UN, and in this connection makes decisions regarding the disposition of these resources. In this way, the Department’s role in requesting how peacekeeping credits are applied by the UN varies depending on the applicable UN General Assembly decisions and UN financial rules concerning these UN resources. Where credits are first applied to unpaid arrears under UN General Assembly resolutions and UN financial rules, the United States does not direct how those credits are applied.²⁸ Where the Department has previously attempted to have credits applied in a different manner, we have been unsuccessful. For example, in 2006 and 2007, in order to try to cover shortfalls in appropriated funds for three missions (MONUC (Congo), MINUSTAH (Haiti), and UNMEE (Ethiopia/Eritrea)), the Department sought to have credits applied from other missions. However, because cap-related arrears existed in the missions where the credits originated, the UN applied these encumbered credits against those arrears. As a result, old arrears related to these other missions were reduced, but the United States accumulated new arrears related to MONUC, MINUSTAH, and UNMEE.

In other situations, decisions of the UN General Assembly have given the United States greater influence concerning the disposition of credits. This is particularly true with respect to unencumbered credits from those closed peacekeeping missions where the United States does not have arrears attributable to that mission. In such instances, the General Assembly and financial

²⁷ While section 10(b) also references “credit”, that subsection does not deal with the UN’s application of peacekeeping credits, nor does it require such credits to be returned to the U.S. Government. Instead, the provision permits agencies receiving reimbursement to credit and merge the reimbursement to the current applicable appropriation that funded the assistance, thereby avoiding having to deposit the reimbursement with Treasury as a miscellaneous receipt. As such, section 10(b) logically only applies to reimbursements paid to the United States, and not to credits applied at the United Nations. But even if section 10(b) was construed to apply to credits applied pursuant to section 10(a), it would still not apply to credits attributable to assessed contributions.

²⁸ While we would have no ability to direct the application of specific credits, the United States would, of course, seek to influence UN General Assembly decisions or the development of financial rules related to credits in a manner that furthers U.S. interests.

rules of the United Nations generally permit Member States to request application of credits to offset other peacekeeping assessments or arrearages attributable to other missions. For example, after the United States accumulated new arrears for MONUC and MINUSTAH as described in the previous paragraph, in 2011 the United States successfully requested that the UN apply \$68.7 million in credits from closed missions to reduce the arrears for those two missions. The United States did not request the application of any available peacekeeping credits in FY 2013.

Question 5. Please provide your legal views regarding whether the Department of State has complied with the 27.14% limitation on assessed contributions in the CIPA appropriation for fiscal year 2013.

Summary

The Office of the Legal Adviser is of the view that the Department of State has complied with the relevant provisos under the CIPA appropriation heading applicable for fiscal year 2013.²⁹ The plain language of the statutory language applies to “funds appropriated or otherwise made available under this heading.” The Department has not obligated FY 2013 CIPA appropriations for U.S. assessed peacekeeping contributions in an amount that exceeds 27.14% of the total assessed expenses for each mission. Further, the UN’s application of credits to offset U.S. peacekeeping assessments cannot be considered to be “funds appropriated or otherwise made available” under the CIPA heading in the FY 2013 Full-Year Continuing Appropriations Act, 2013. Instead, the UN’s actions are best viewed as an internal UN mechanism for the allocation of its own resources. Given that assessed contributions to the United Nations, once transmitted by the United States, become UN resources available for the expenses of that organization, interpreting U.S. legislation to purport to dictate subsequent use of those resources would create significant foreign policy difficulties and be legally questionable. Such a problematic interpretation should not be assumed, particularly where the plain text of the legislation does not warrant such a reading. Finally, the Department’s position with respect to UN credits is consistent with past practice and prior GAO decisions.

I. Peacekeeping credits are UN resources which the UN may use for appropriate expenses of the organization.

Because the U.S. properly obligated and expended appropriated CIPA funds to pay U.S. peacekeeping assessments, the U.S. contributions became funds of the United Nations. Those funds are available for appropriate expenses of the organization as decided by the UN General

²⁹ In light of Congressional concerns with having CIPA appropriations plus UN applied peacekeeping credits exceed 27.14%, for policy reasons the Department has not fully obligated FY 2013 CIPA funding as included in the September 13, 2013 spending plan provided to Congress. Instead, because 15% of the FY 2013 CIPA appropriation remains available through September 30, 2014, the Department has carried forward additional FY 2013 CIPA appropriated funding. While the Department still intends to apply FY 2013 CIPA appropriated funding as previously notified to Congress, current CIPA obligations when combined with UN applied peacekeeping credits in FY 2013 do not exceed 27.14%.

Assembly consistent with the UN Charter. In this regard, U.S. assessed contributions paid to the UN are unlike grants, contracts, and other types of payments in that they are appropriated to provide for the general operating expenses of the organization, and in the case of CIPA are specifically appropriated for peacekeeping expenses of the organization. At the point the contribution is transmitted to the UN, the funds are expended by the Department and the purpose of the appropriation (i.e. to make assessed contributions for international peacekeeping) has been fully satisfied. At that point, the UN controls the disposition of these funds, including funds it may subsequently choose to “credit” to Member States.

Since the UN controls the disposition of its funds and may use them for the expenses of the organization, specifically peacekeeping expenses, UN credits are not akin to an “overpayment” of a bill for goods and services, which generally must be refunded to the relevant appropriation or to miscellaneous receipts. There is no provision in the UN Charter for “excess” contributions to be returned to Member States. Normally, the UN General Assembly decides to apply credits attributable to a particular Member State’s contributions to that Member States’ arrearages or other outstanding assessments. While the UN General Assembly is unlikely to deviate from this general approach, this does not change the fact that these funds remain UN resources that have already been contributed to the organization, and the UN controls their disposition. And as demonstrated in the responses to the prior questions, the UN General Assembly has made decisions with respect to peacekeeping credits that direct their use in a manner that might not be always consistent with Member State preferences. In short, there is no basis to conclude that the restrictions in the CIPA appropriations apply to the use of funds of the United Nations under UN General Assembly decisions or UN regulations.

II. The restrictions found in the CIPA appropriation do not extend to the UN’s application of credits.

The FY 2012 SFOAA, as carried forward by the FY 2013 CR, contains two applicable provisos limiting the amount of funding appropriated for CIPA that may be made available for US assessed peacekeeping contributions. The pertinent provisos read as follows:

“Provided further, That notwithstanding any other provision of law, funds appropriated or otherwise made available under this heading shall be available for United States assessed contributions up to the amount specified in Annex IV accompanying United Nations General Assembly Resolution 64/22:

Provided further, That such funds may be made available above the amount authorized in section 404(b)(2)(B) of the Foreign Relations Authorization Act, fiscal years 1994 and 1995 (22 U.S.C. 287e note) only if the Secretary of State determines and reports to the Committees on Appropriations, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign

Relations of the Senate that it is important to the national interest of the United States.”

Under these provisos, in order to pay above the 25% limitation imposed under section 404(b)(2)(B) of the FY 1994 and 1995 Foreign Relations Authorization Act, the Secretary of State must determine and report to Congress that paying at a higher rate is important to the national interest of the United States. The Deputy Secretary of State made this determination on June 11, 2013.³⁰ Once such determination is made, notwithstanding the limitation in section 404(b)(2)(B), FY 2013 funds appropriated under the CIPA heading may be made available for U.S. assessed contributions up to the amount specified in the applicable UN document setting forth the peacekeeping assessment rates.³¹ The Department has not obligated funds appropriated for CIPA in FY 2013 for U.S. assessed peacekeeping contributions in an amount that exceeds 27.14%, and does not intend to use any of those funds that remain available for contributions in excess of this amount.

It is clear that credits cannot be considered to be funds appropriated under the CIPA heading for FY 2013. The credits at issue are attributable to U.S. contributions paid from prior year CIPA appropriated funding, which has been obligated and expended in accordance with the statutory cap in place at the time, as set forth in 404(b)(2) of the FY 1994 and 1995 Foreign Relations Authorization Act or other applicable provision of law. Thus, even if credits were considered to “relate back” to the CIPA-funded contributions to which the credits are attributable, those contributions were themselves lawfully obligated and expended consistent with the then applicable statutory restrictions.

The UN’s application of credits also cannot be considered to be funds “otherwise made available” under the CIPA heading. As credits are UN resources attributable to prior U.S. contributions which have already been obligated and expended, in no sense can they be considered to be “made available” under an appropriations act. In this context, the phrase

³⁰ Authority for this determination has been delegated to the Deputy Secretary of State pursuant to Department of State delegation of authority 245-1.

³¹ Because the applicable UN document referenced in the FY 2012 SFOAA includes two different rates for a three-year time period from 2010 to 2012, but does not specify an assessment rate for 2013, there is a threshold question of which assessment rate should apply as the statutory limitation under the Full-Year Continuing Appropriations Act, 2013 (FY 2013 CR). In the context of a continuing resolution, we seek to apply applicable conditions and limitations of the underlying act in a functional manner that continues to give effect to those conditions and limitations for the duration of the continuing resolution. In this instance, we agree that it would thwart the continued effect of the restriction to suggest that there was no applicable limitation for 2013 given the lack of a rate in the UN document referenced in the FY 2012 SFOAA. However, we believe that it is a reasonable interpretation of the FY 2012 SFOAA provision, as applied by the FY 2013 CR, to read the restriction as limiting the use of CIPA appropriations to the assessed rate for 2013 (28.38%), as established in the subsequent UN document setting forth the assessment rates for 2013 through 2015. Notably, the FY 2012 SFOAA did not amend the statutory cap by adjusting the specific percentage, as has been done on multiple prior occasions, but instead referenced the UN document setting the assessment rates over a period of time. Nonetheless, the Department has only sought to obligate FY 2013 CIPA appropriated funds up to the 27.14% rate established by the United Nations for 2012.

“otherwise made available” would capture other types of budget authority, such as offsetting receipts, that may be made available for CIPA in FY 2013. UN credits are not considered to be budget authority. Nor does the last proviso under the CIPA heading alter our conclusion.³² The last proviso seeks to limit the availability of peacekeeping credits to U.S. assessed contributions to the United Nations, subject to regular notification procedures of the Appropriations Committees. While that proviso may seek to limit the use of credits and subject the application of credits to additional congressional oversight, credits still would not be treated as budget authority. Credits are resources of the United Nations and, as such, appropriations provisions cannot make available funds that belong to the United Nations.

III. Interpretations of law purporting to control the actions of the UN should not be assumed as it would subject the Department’s compliance with U.S. law to the actions of an external body and create significant foreign policy difficulties.

The United Nations’ automatic application of credits in 2013 effectively illustrates the impact of what would happen if credits were subjected to the statutory cap. The Department obligated FY 2012 CIPA appropriated funding in accordance with the 27.14% cap. As a result of the increased assessment rate for calendar year 2013, FY 2012 CIPA contributions at 27.14% were insufficient to fully meet U.S. assessed obligations. When the United Nations issued assessments in the beginning of the following UN peacekeeping fiscal year (2013/2014), new credits were reflected in the assessments for those missions where the UN General Assembly had decided to issue credits. But in accordance with the UN General Assembly decision, those new credits were first applied against the unpaid obligations from the prior UN peacekeeping fiscal year. Consequently, even though the Department had only used FY 2012 CIPA appropriated funds at the statutorily capped rate, the United Nations automatically applied credits to reduce U.S. obligations that the Department had not paid due to the statutory cap. If the UN’s application of credits were subject to the statutory cap, then FY 2012 appropriated funds plus credits would have exceeded the cap, even though the Department would have taken no action to exceed the cap.

Subjecting the UN’s application of credits to U.S. appropriations law would not only be impossible to implement, but could have severe repercussions for U.S. relations with the UN. Put simply, the United States is unable unilaterally to direct the UN on the application of UN resources.³³ The United States would have no basis to direct the UN to use its resources in a manner that could be inconsistent with UN General Assembly resolutions and UN financial regulations. This approach would also strain relations with the United Nations and its Member

³² The proviso provides “That any such credits shall only be available for United States assessed contributions to the United Nations and shall be subject to the regular notification procedures of the Committees on Appropriations.”

³³ Any interpretation of these restrictions that required the Executive Branch to insist that the UN apply credits in a certain manner could also raise constitutional concerns in that it would interfere with the constitutional prerogative of the President to conduct diplomacy, including our diplomatic relations with the United Nations.

States, and would ultimately work to weaken U.S. efforts to promote improved fiscal management and accountability at the UN. In addition, insisting that the UN direct its resources in a manner that increases U.S. peacekeeping arrears is not only counter to U.S. Government policy to avoid new U.S. arrears, but undermines longstanding U.S. policy of working to ensure that other Member States pay their peacekeeping assessments in full.³⁴

An interpretation that sought to mitigate these negative effects by limiting the application of the statutory cap to peacekeeping credits where the United States is able to request how the UN applies those credits would be both unwarranted and unwise. First, there is nothing in the text of the FY 2012 CIPA proviso that would justify differentiating between credits where the UN automatically applies them and credits where the UN allows Member States to request how those credits are to be applied. Second, such an interpretation still fails to account for the fact that credits are UN resources and ultimately controlled by the UN. Even where the UN permits the U.S. as a Member State to request how credits are applied, so long as those resources remain the UN's, they are not U.S. budgetary resources and are not subject to restrictions on U.S. appropriated funds. Third, applying the statutory cap only to credits where the United States can request their application risks having the United Nations increasingly adopt resolutions and rules where Member States lack a say in the disposition of resources attributable to their contributions. Such an interpretation is certainly not compelled, or even suggested, by the plain text of the statute, and we do not believe it is warranted.

IV. The Department's position with respect to UN credits is consistent with prior precedent.

A. Past practice of the UN

The UN has previously applied credits to U.S. arrears that accumulated as a result of the statutory cap on peacekeeping contributions. In FY 2009, Congress authorized sufficient authority and funding for CIPA appropriations to enable the United States to cover its 2009/2010 UN peacekeeping fiscal year assessments in full. Therefore, credits were not needed to offset 2009/2010 assessments, even though the assessment rate increased in 2010. As a result, the UN applied newly available credits to outstanding U.S. balances on various missions. For those missions where the United States had prior-year unpaid obligations, the UN automatically applied approximately \$67 million in credits to reduce those unpaid balances. For example, the UN applied approximately \$40 million in credits generated from UNIFIL (Lebanon) to our outstanding balance for that mission which was due to the application of the statutory cap in previous years. The Department did not reduce or alter its current-year payments to offset this "auto-applied" adjustment. At that time, House appropriators received oral and written briefings

³⁴ See, e.g., H. Con. Res. 343 (Aug. 20, 1964), 78 Stat. 1213 ("it is the sense of the Congress that the President should direct the Permanent United States Delegate to the United Nations to continue efforts toward securing payment by members of the United Nations of their assessments in arrears.")

on the Administration's position regarding the application of UN peacekeeping credits and did not object.

UN control of resources provided to it through contributions, including credits, has also been recognized by prior Administrations and the Congress. In 1993, Secretary of State Warren Christopher requested that the UN credit \$32.2 million in Tax Equalization Fund credits toward the U.S.'s 1993 UN general budget assessment. In describing that request, Vice President Gore's Report on the National Performance Review expressly stated that "[t]he UN must agree to this crediting of the \$32.2 million toward the assessment in order for this to be a real savings. Otherwise the UN will consider the United States to be that amount in arrears. Although the United States may reduce its outlay, the technical obligation to make the payment would remain."³⁵ Congress has also passed legislation recognizing United Nations control of credits. Section 113(e) of the Foreign Relations Authorization Act, Fiscal Year 2003, provided:

The United States shall continue to insist that the United Nations and its specialized and affiliated agencies shall credit or refund to each member of the organization or agency concerned its proportionate share of the amount by which the total contributions to the organization or agency exceed the expenditures of the regular assessed budget of the organization or agency.³⁶

In insisting that the United Nations provide a credit or refund, Congress recognized contributions to the UN become UN resources, outside the purview of restrictions on appropriated funds, but still within the ability of the United States to seek to influence how the UN disposes of UN resources.

B. GAO decisions

From the early days of the United Nations, the GAO has recognized that our contributions to the UN cease to be federal funds. In a decision dating back to 1944, the Comptroller General was asked whether it would be proper for the SEC to carry an employee on its payroll for the duration of the employee's annual leave while the employee was drawing compensation from the United Nations Relief and Rehabilitation Administration (UNRRA). Although it does not appear that appropriations had at that point been made for the UNRRA, the Comptroller General opined that "[i]t is assumed, too, that if and when funds are provided for by the Congress for this country's participation in the [UNRRA], such funds will be intermingled with grants made by other allied United Nations and, as such, will lose their status as federal funds."³⁷ This view that contributions to international organizations become the property of the organization upon

³⁵ "Department of State and U.S. Information Agency" accompanying 1993 Report of the National Performance Review, Office of the Vice President, *available at* <http://govinfo.library.unt.edu/npr/library/reports/STATE9.html>

³⁶ Pub. L. No. 207-228 (2002). The FY 2003 Foreign Relations Authorization Act is the most recent law authorizing appropriations for the Department.

³⁷ 23 Comp. Gen. 744 (April 1, 1944). *See also* 25 Comp. Gen. 38 (July 11, 1945).

transfer and are not subject to statutory appropriations restrictions is well grounded, and has been supported in other similar contexts.³⁸

Our views are also consistent with GAO's more recent decision in the Matter of International Natural Rubber Organization (INRO).³⁹ In that case, INRO planned to retain "excess" member state contributions (including those attributable to U.S. contributions), investment earnings, and proceeds of sale in an account that "presumably would result in reduced need for future contributions" to pay for the expenses of the organization. GAO concluded that it had "no legal objection" to two different arrangements in which INRO would retain those funds to fund its expenses because the funds were "in custody of the INRO itself". Although funds that are actually returned to the United States must be credited to the relevant appropriation or to miscellaneous receipts, GAO did not suggest that the funds retained by INRO, even if attributable to U.S. contributions, were to be treated as U.S. appropriations or needed to be returned to the United States for deposit into the Treasury. GAO's conclusion in the INRO decision, like the much earlier decisions concerning the UN, supports the principle that U.S. assessed contributions (whether "excess" or not) that are held by an international organization may be used to fund expenses of the organization without regard to U.S. legal restrictions on the appropriations used to fund the contributions.

³⁸ See, e.g., GAO Decision B-80351 (September 30, 1948) ("The rule is well settled that grant funds which are transferred to one of the States of the United States become the property of the transferee, and are not subject to statutory restrictions which may exist with respect to the expenditure of appropriated moneys but which are not made a condition of the grant.... Such rule would appear to apply with equal if not greater force to the transfer of grant funds to another sovereign nation. As a corollary to that rule, it would seem to follow that the existence of authority to make an unconditional grant necessarily makes any restrictions other than those which may be contained in the instrument of transfer inapplicable to the funds granted.")

³⁹ 62 Comp. Gen. 70 (Dec. 6, 1982).